

MINERVA; OR, ANTI-JACOBIN.

TWO & A HALF DOLL. PER ANN. Payable half-Yearly.

PUBLISHED (WEEKLY) BY WILLIAM BOYLAN.

TWO DOLLARS PER ANN. Paid in Advance.

Vol. 8.]

RALEIGH, (N. C.) MONDAY, SEPTEMBER 19, 1803.

[No. 389.]

From the BALANCE.

A CORRECT HISTORY OF HARRY CROSWELL'S TRIAL.

(CONTINUED.)

It was then contended, that, as this was clearly charged on the indictment as a public libel, or a libel on government, attacked in the person of its highest officer, even by the common law of England at this day, the truth might be given in evidence: and that it was a justification of the person indicted. To this point several authorities were cited. It was forcibly and lengthily contended; but as this was not the strongest ground; and as we are not properly qualified to report it, we proceed to the next point.

They said, let the law of England be what it might;—let that *Magnate* have planted millions of iron barriers around the throne, and shielded his majesty from the eye and the animadversions of the public;—let him bow before his throne, and acknowledge him their sovereign—the source of all honour—all power; let them think *he can do no wrong*. In this country the scene was very different.—Here we have a president. That president is not a monarch. He is not a sovereign. The people are sovereign; & the president is but their *servant*. They are the source of power; and he is responsible to them. All this—all the power of the government—all the rights of the people—are defined and secured by a constitution. They are not dependent upon the English law, any farther than that law is adopted by the constitution of this state.—They then read the following clause from the constitution:—

“That all such parts of the said common law, and all such of the said statutes, and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians, or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government or prerogatives, claimed or exercised by the king of Great-Britain and his predecessors, over the colony of New-York and its inhabitants, OR ARE REPUGNANT TO THIS CONSTITUTION, be, and they hereby are ABROGATED AND REJECTED.”

The question, then, they said, was reduced to this point. Admitting that the law of England prohibits the giving of the truth in evidence, is that law repugnant to the spirit of the constitution of this state, and the genius of a republican government? If it is, the constitution declares it not the law of this state in those emphatic words—“IT IS HEREBY ABROGATED AND REJECTED.”

The grand principle upon which every republican government is founded; and that, indeed, which distinguishes it from all other governments; is a law and full responsibility of officers to the people: Or, in other words, that the people are the sovereign—their officers are their servants; and, consequently, that the latter are dependent upon the former, and accountable to them for all their conduct. This principle of responsibility, is a prominent feature in our constitution and government. It is this which inspires the whole mass, and gives it life, beauty and vigour. In our constitution, this principle is exercised by the people and felt by the officer in two ways. First, the people have here the right of impeaching; and, second, they have the right of election. And by the full and free exercise of these two rights, the people can at all ways preserve themselves from slavery. They can always keep the ambitious in awe. They can carry to the soul of the tyrant, a conviction of his wickedness; and they can strip the canting demagogue of his brief authority.—But of these two rights—the right of impeachment, and the right of election—the latter is infinitely more important than the former. The former, it is true, may grasp the sturdy criminal—it may, sometimes, arrest the traitor in the midst of his career. But the man who can pronounce that the right of impeachment is sufficient to preserve the people from the arts of the crafty—the efforts of the hypocritical, and the bold attempts of the tyrant, will, at the same time, pronounce his ignorance of history, and total inattention to the precepts of experi-

ence. How frequent have public crimes transpired! How few have been punished by impeachment!

Those venerable patriots who framed our constitution, well knew the inefficiency of such a power. They, therefore, secured to the people the right of periodical election. They plainly saw, that such a weapon, in the hands of the people, was necessary to their defence against the ambition of the great, & the treachery of rulers. By this right, they placed the whole government in the hands of the people. They gave them power to remove those who should display principles hostile to the constitution—hostile to liberty, or inconsistent with the public good. In short, by this right of election, they made the people sovereign—secured to them the power of calling their servants periodically and frequently to answer for their conduct, that if they were found honest & capable, and faithful to the constitution, they might be honoured and advanced—if the reverse, that they might be consigned to private infamy.

A right of such consequence, surely should be held sacred. A power which secures and protects every right and privilege which the people possess, ought to be watched with a jealous eye: And that principle which invades it, together with its author, ought to be followed by the execration of the people.

Should any man attempt to introduce into this state, a principle of common law, which, in plain terms, should forbid the right of periodical elections, would he not be arrested by the Court? Would not the Court answer, “Sir, the right of suffrage is secured by the constitution; this law invades that right, it is, then, repugnant to the constitution, and is, therefore, abrogated and rejected.”

But, although this part of the common law, which forbids the giving of the truth in evidence, does not, in express terms, forbid the holding of elections; yet it renders them of no effect: It reduces them to mere forms! It destroys all the beneficial effects which the constitution designed should flow from them. For, surely, if the truth cannot be given in evidence, as a justification, no man, no printer will dare to publish facts, if those facts impeach the character, expose the vices, and reprehend the malconduct of a president. The truth will be wholly restrained. Information of the true character and real conduct of those in power, will never be received by the people. And of what use, they asked, would elections be, if that knowledge, that information, *that truth*, which would enable the people to judge correctly, is thus prohibited? Is it not the very object, the very essence of elections, to correct abuses in government? To crush the first symptoms of treachery or oppression? But if the publication of the truth is prohibited, can this be done? Can the people judge correctly? Will they know who is treacherous and who is faithful? Who deceives and who betrays their confidence? Will they not come forward at elections, ignorant of the real merit of every candidate? And will they not thus be liable to the imposition of every influential demagogue?—Can it be denied, that there will be the legitimate consequences of prohibiting a publication of truth? And can it be denied, that a law pregnant with such consequences, is repugnant to the true spirit of the constitution? Is not one check on power, which the constitution has placed in the hands of the people, wholly destroyed? It is true, such a law will not prohibit the holding of elections.—People may continue to vote: But will they know for whom, or for what, they vote? No! elections will become little better than ridiculous forms. If that correct information, requisite to render them effectual to the purposes designed by the constitution, is prohibited, the spirit of the constitution is invaded.—Will not, then, the Court say, “Altho’ this law does not forbid elections, yet it destroys their whole benefit. Although it permits the form to remain, it takes away the substance. If it prohibited elections in express terms, it would clearly be unconstitutional. As it tends to undermine the right of suffrage—as it clearly destroys every benefit which the constitution designed should flow from

an exercise of that right, it is repugnant to the spirit of the constitution; and, in the strong language of the constitution, “it is hereby abrogated and rejected.”

That this law prohibiting the giving of the truth in evidence, would completely shackle the press, restrain the freedom of public discussion, & prevent the publication of truth, they contend, could not be doubted. That same law of libels, which is now attempted to be established, declares that any publication, which tends to bring into contempt or disrepute an officer of government, is a libel.

Can any publication be made, which disapproves any measure of government, without tending to bring some officer into disrepute or contempt? What, then, is meant by “freedom of discussion”—“Liberty of the press?” Is it the liberty of applauding the measures of our government, right or wrong—of singing hallelujahs, indiscriminately, to the patriot and the demagogue? Such a *liberty*, would be the very *security* which the demagogue and the ambitious would desire. Under the influence of such a *liberty*, the press would be converted into an efficient engine of tyranny. No longer, with that boldness and energy which has hitherto attended it, would it unmask treachery and artifice. All its energy would be exerted to shield from public inspection the conduct of our rulers. It would finally succeed; and we might be blindly led victims to the altar of tyranny, before we should hear one whiff of danger.

They contend, that the only line which could be drawn between the liberty and licentiousness of the press, was the great line which separates *truth* from *falsehood*.—This was the line marked by the law called the Section Law. And such a line is prescribed by the true spirit of our constitution—by every principle of republicanism. It is conformable to the great laws of morality and justice. No other line can be drawn, which will not invade the liberty of the press; which will not invade that responsibility of officers to the people, which is secured by the constitution. If any one publishes falsehood, let him be punished. If he publishes truth, let him be acquitted. But, let no one be fined and imprisoned, for exercising a right, secured by the constitution of this state, and guaranteed by every principle which deserves the name of republican. At all events, they said, as this was a question of such vast importance, not only to Croswell, but to the whole community; and, as it certainly was a question of doubt and difficulty, they trusted that his honor would not, by a hasty decision, at *Nisi Prius*, compel the defendant to trial; but would permit the question to be settled by an application to the Supreme Court for a commission, which application they engaged to make at the next term.

Such was the general scope of the arguments for the defendant. We pretend not to give the language of the counsel; but we believe we have correctly stated the grounds of the application.

Mr. Spencer rose—but Judge Lewis informed him that it was unnecessary for him to reply. Mr. Spencer said, he was not about to answer the arguments of the gentlemen; but merely to read a stipulation into which the counsel for Mr. Croswell had entered at the last sessions, to try the cause at this circuit.—The judge told him, that, as that stipulation had not been made a rule of court, he could not notice it if it was of no effect.

His honor then expressed his opinion nearly in these words:—I am astonished at this application. The law is settled, that the truth of the matter published cannot be given in evidence by way of justification. If, after conviction, such evidence were offered to the court, in mitigation of the punishment, it would be received. I am astonished that the witness upon whom the defendant relies, should be the very man whom one of the defendant's counsel had called an infamous libeller. I am astonished, too, that considerations of policy are urged, in order to subvert a settled rule of law.—I very much regret that the law is not otherwise; but, as I am to declare what the law is, I cannot, on this ground, put off the trial of the cause. I therefore pronounce this to be the law—that the defendant, if he thinks proper, may bring up the question before the supreme

Court. I am astonished, however, that this application should be made at all, when Mr. Van Nels, of counsel for the defendant, this morning moved to bring on the trial—Here Mr. V. Nels observed that his honor had wholly misunderstood him. When the Attorney-General moved to bring on the trial, he said he had remarked that he considered it the right of the defendant to move to bring on the trial, inasmuch as he had caused the record to be made, and had given notice of trial to the district attorney; and that this right would be insisted upon whenever the Attorney-general was ready to proceed. Besides, he remarked, it would have been very strange if he had expressed himself in the manner stated by his honor, as he, at that very moment, had in his hands the affidavit, which had been prepared for the express purpose of making an application to put off the trial. The other counsel for the defendant also declared that Mr. Van Nels had been misunderstood by his honor. His honor, however, said he could not have misunderstood what had been said; and concluded by saying, that however this might be, he would not put off the trial; for, even if the witness to prove the truth of the publication, was in court, he would not suffer him to be examined on that point. He ruled, therefore, that the cause proceed to trial.

(TO BE CONTINUED.)

Scheme of a Lottery.

1 Prize to *cash* *5000* Acres of good Land in Johnston County, on which is a rich bed of Iron Ore, a Great Mill, and one half of the celebrated Manroough Iron Works, well supplied with an excellent Stream of Water, and the Tools and Implements necessary for carrying on the business, and the list of a black Iron's Shop & Tools, Dols. 3,000 to 3,000

1 Prize 640 Acres of Land in Johnston County, on the main Road leading from Smithfield to Raleigh, 600 600

1 Prize a valuable Negro Man Slave 400 400
1 Prize a Horse, 87 1/2 87 1/2
1 Do. do. 85 85
1 Do. a Silver Watch, 17 1/2 17 1/2
1 Do. do. 15 15
2 Cash Prizes, 50 100
2 Do. 20 40
300 Do. 10 3000

4000 Tickets at 5 dols each is 20,000
This Lottery will commence Drawing at Smithfield by the Managers, on the second Monday following next, and continue until finished. A list of the fortunate Numbers will be published in the Newspapers.

All prizes will be paid on demand. To accomplish that those who may have more convenient to pay at Raleigh some person there will be employed to pay the prizes on such tickets as may be preferred. Those not demanded within 12 months after the drawing is finished will be considered as relinquished to the proprietor of the Lottery.

This Lottery is for the benefit of Mr. Joseph Taylor, to enable him to dispose of his Property. His property is estimated at a fair Valuation, and Mr. Frost has entered into Bonds in the sum of 10,000 Dollars, with sufficient Sureties, that all the Prizes shall be duly paid, and good & sufficient Titles given to the Lands, Iron Works &c. These bonds are in possession of the managers.

A great advantage which this Lottery possesses over any that have lately been proposed to the Public is, that there is no drawback upon the Prizes. The Prizes amount to the full sum that is paid for the Tickets, without any deduction whatever. The number of Tickets is also small, which increases the chance of obtaining the high Prize.

The Managers pledge themselves to see that the Drawing is duly and fairly conducted; and as the Object of the Lottery is to assist a good Citizen to the Sale of his Property, and so it offers great Advantages to Adventurers, they trust the Tickets will meet with a ready Sale.

Tickets at 5 Dollars each to be had of Mr. Frost, of the Managers, of Mr. C. Parikh, Raleigh; Mr. P. Henderson Chapel Hill, Mr. J. Torrence Hillsborough, Mr. J. Hunt Franklin, Mr. S. Lanier, Rockingham, Mr. G. Hooper, Stokes, Mr. G. Banks, Averborough, Mr. H. Williams, near Fayetteville, and of several other gentlemen in different parts of the State:

M. HANCOCK,
ROB. GULLEY, Jun.
W. WATSON,
CALVIN JONES,
HARDY BRYAN, } Managers

Johnston County, May 18, 1803.